



Federal Communications Commission
Washington, D.C. 20554

July 8, 2015

DA 15-796

Dana Frix, Esq.
Chadbourne & Parke LLP
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

Re: EB Docket No. 11-71
Request for Briefing Schedule

Dear Mr. Frix:

We have received your letter dated June 9, 2015, in which you request that the Office of General Counsel issue a briefing schedule in connection with Commission review of interlocutory appeals from Memorandum Opinion and Order, FCC 15M-14 (Apr. 22, 2015).¹ That order, by Chief Administrative Law Judge Richard L. Sippel, excluded Mr. Warren Havens and related entities from participation in this hearing proceeding and certified a question concerning Mr. Havens' character qualifications to the Commission.² Interlocutory appeals of that order are pending before the Commission.³ You state that you represent Mr. Havens and two of his companies, Environmental LLC and Verde Systems, LLC (ENL-VSL).⁴

The Commission's rules do not generally provide for a briefing schedule when the Commission reviews an administrative law judge's interlocutory ruling. We note, however, that in the interlocutory appeal you filed on behalf of ENL-VSL you observed that "[i]t is impossible to respond to a 14-page, single-spaced order containing a laundry list of alleged wrongdoings in the 5 double-spaced pages allotted for interlocutory appeals."⁵ Your appeal further states: "[i]f the Commission is not prepared to rule in [ENL-VSL's] favor based on this appeal, due process requires that [ENL-VSL] be given a reasonable opportunity to respond. . . ."⁶

We interpret your June 9 letter, consistent with this language, as a request to file a pleading to supplement ENL-VSL's pending appeal to more fully address the finding that Mr. Havens and his companies should be excluded from the hearing proceeding. Because FCC 15M-14 is unusually lengthy and complex for an interlocutory order, we recognize that more than five pages may be appropriate to fully address the bases for that finding. Your letter does not indicate

¹ Letter from Dana Frix to Linda Oliver (June 9, 2015) (Request).

² The order also dismissed a motion for summary decision, but that action is not before the Commission.

³ ENL-VSL Interlocutory Appeal as of Right, filed April 29, 2015 (ENL-VSL Appeal); Interlocutory Appeal, filed April 29, 2015, by Warren Havens. Additionally, ENL-VSL filed a petition for reconsideration with the presiding judge.

⁴ Request at 1.

⁵ ENL-VSL Appeal at 5. *See* 47 C.F.R. § 1.301(c)(5).

⁶ ENL-VSL Appeal at 5.

how many pages you wish to file. We believe the most appropriate analogy is to the requirements generally applicable to both applications for review and appeals from a presiding officer's final ruling.⁷ Accordingly, you may file in EB Docket No. 11-71 a supplemental pleading jointly on behalf of ENL-VSL and Mr. Havens within 30 days of the date of this letter.⁸ Opposing parties may file oppositions within 15 days thereafter. You may file a reply within 10 days after that. The joint supplemental pleading, as well as any oppositions to it, may not exceed 25 double-spaced pages. Your reply may not exceed 5 double-spaced pages and may address only matters raised in any oppositions.

We take this action under the delegated authority granted by 47 C.F.R. § 0.251(c).

Sincerely yours,

Linda Oliver
Associate General Counsel

Cc:

Parties to EB Docket No. 11-71
The Honorable Richard L. Sippel

⁷ See 47 C.F.R. § 1.115(d), (f); 1.302(a), (e), (g).

⁸ You should also file your June 9 request and the May 28 and June 1 letters referenced therein in EB Docket 11-71. We note that you provided electronic copies of these letters to the parties in that proceeding on June 8 and 9, 2015.